

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

Case Number: C 07-05845 MMC

FIRST AMENDED COMPLAINT

[Violation of Fair Labor Standards Act, 29 U.S.C. section 201 *et seq.*]:

Defendant.

Plaintiffs DENNIS HART and RON MILLER, by and through their counsel, as and for their Complaint against the CITY OF ALAMEDA, allege and aver as follows:

1. Plaintiffs DENNIS HART and RON MILLER were and are, at all times material hereto , employed by Defendant City of Alameda as police sergeants holding sworn status pursuant to California Penal Code section 830.1

2. Defendant CITY OF ALAMEDA, at all times pertinent herein, was a municipality organized and operating under the laws of the State of California.

3. Jurisdiction is conferred upon this court by 28 U.S.C. §1331, 29 U.S.C. §216(b).

4. Defendant CITY OF ALAMEDA is, and at all times material hereto was, a public agency within the meaning of Section 3(x) of the FLSA. 29 U.S.C. §203(x).

1 5. Defendant CITY OF ALAMEDA is, and at all times hereby was, engaged in
2 related activities performed through unified operation or common control for a common business
3 purpose in conjunction with the activities of a public agency. Defendant CITY OF ALAMEDA is,
4 and at all times material hereto was, an enterprise within the meaning of Section 3(r) of the FLSA.
5 29 U.S.C. §203(r).

6 6. Defendant CITY OF ALAMEDA has, and at all times material hereto had, engaged
7 in commerce or in the production of goods for commerce, or had employees handling, selling, or
8 otherwise working on goods or materials such as motor vehicles, petroleum products, food, and
9 weapons that have been moved or produced for commerce. Defendant CITY OF ALAMEDA is,
10 and at all times material hereto was, an enterprise engaged in commerce or the production of
11 goods for commerce within the meaning of Section 3(s) of the FLSA. 29 U.S.C. §203(s).

12 7. At all times material hereto, Plaintiffs were members of the Alameda Police Officers
13 Association, the duly recognized employee organization (as that term is defined in the Meyers-
14 Miliias-Brown Act, Cal. Gov. Code §§ 3500, *et seq.*,) representing the non-exempt, rank-and-
15 file employees of the CITY OF ALAMEDA's Police Department in all aspects of their
16 employment relationship. The Alameda Police Officers Association is the exclusive recognized
17 bargaining agent for both the sworn police unit (comprised of the classifications of Police
18 Sergeant and Police Officer), as well as the non-sworn unit (comprised of the classifications of
19 Senior Public Safety Dispatcher, Public Safety Dispatcher, Crime Scene Specialist, Property &
20 Evidence Technician, Jailer, Police Technician, and Animal Control Officer).

21 8. At all times material hereto, the terms and conditions of employment for the
22 classifications represented by the Alameda Police Officers Association are and were codified in
23 collective bargaining agreements (otherwise known as a "Memoranda of Understanding")
24 entered into between the CITY OF ALAMEDA and the Alameda Police Officers Association
25 for both the sworn and non-sworn units. Once adopted by the City Council, that collective
26 bargaining agreements were and are binding. *Glendale City Employees Association, Inc. v. City*
27 *of Glendale*, 15 Cal. 3d 328 (1975).
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1 9. In addition to the named Plaintiffs, all other similarly situated persons, that is, all
2 persons who are or were employed by Defendant CITY OF ALAMEDA in the sworn and non-
3 sworn units subject to the Memoranda of Understanding between the CITY OF ALAMEDA and the
4 Alameda Police Officers Association, are members of the Plaintiff class. This claim is maintained
5 as a collective action under, and pursuant to, the statutory requirements of the Fair Labor Standards
6 Act (hereinafter "FLSA") 29 U.S.C. §216(b). Incorporated by reference herein as though fully set
7 forth are the consent forms for the applicable class members pursuant to the statutory requirements
8 of the FLSA 29 U.S.C. §216(b) that were attached as Exhibit A to the Complaint filed on November
9 19, 2007.

10 10. At all times material hereto, the applicable Memoranda of Understanding for the
11 sworn and non-sworn classifications represented by the Alameda Police Officers Association
12 established a forty (40) hour work period with paid leave time counting as "hours worked."
13 The CITY regularly and effectively implemented the forty (40) hour work week and did not
14 avail itself of the benefits of any other work period permitted for public safety employees.

15 11. At all times herein material, the applicable Memoranda of Understanding for the
16 sworn and non-sworn classifications represented by the Alameda Police Officers Association
17 contained a variety of specialty and premium pays, including acting pay, educational incentive pay, retention
18 pay, bilingual pay, call back pay, court time pay, field training officer pay, holiday-in-lieu pay, canine pay and
19 stand-by pay. The hourly value of each of these specialty and premium pays is required to be included in the
20 FLSA regular rate of pay.

21 12. Defendant CITY OF ALAMEDA has failed to properly compensate Plaintiffs, and
22 all other similarly situated employees, for the time it has failed to properly calculate the "regular
23 rate" of pay for overtime compensation, as that term is defined by Section 207(e) of the FLSA, by
24 failing to include in the regular rate calculation the following specialty and premium pays: bilingual
25 pay, call back pay, court time pay, field training officer pay, holiday-in-lieu pay, canine pay, and
26 stand by pay.

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FIRST CLAIM FOR RELIEF

VIOLATION OF FAIR LABOR STANDARDS ACT

13. Paragraphs 1-12 are incorporated and re-alleged herein as though fully set forth.

14. Defendant CITY OF ALAMEDA has willfully violated, and is willfully violating, the overtime compensation requirements of the FLSA, 29 U.S.C. §207, by employing the named Plaintiff and other similarly situated employees in an enterprise engaged in commerce or in the production of goods for commerce, for work weeks longer than the applicable maximum weekly hours established by Section 207 of the FLSA, without compensating them for work performed in excess of the above-described hours at rates not less than one and one-half times the regular rate of pay.

SECOND CLAIM FOR RELIEF

VIOLATION OF FAIR LABOR STANDARDS ACT

15. Paragraphs 1-14 are incorporated and re-alleged herein as though fully set forth.

16. Defendant CITY OF ALAMEDA has willfully violated, and is willfully violating, the overtime compensation requirements of the FLSA, 29 U.S.C. §207, by employing the named Plaintiff and other similarly situated employees without compensating them by failing to properly calculate the "regular rate" of pay for overtime purposes as that term is defined by Section 207(e) of the FLSA.

WHEREFORE, Plaintiffs and all other similarly situated employees demand:

1. That Defendant CITY OF ALAMEDA be required to pay to the named Plaintiffs and all other similarly situated employees unpaid regular and overtime compensation found due by the court as a result of Defendant's violation of Section 207 of the FLSA, plus an additional equal amount as liquidated damages;


2. That Defendant CITY OF ALAMEDA be required to pay the named Plaintiffs and all other similarly situated employees their reasonable attorneys' fees, costs of this action, and both pre-judgment and post-judgment interest;

1 3. That Plaintiffs and all other similarly situated employees have such further relief as
2 is deemed just and necessary.

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5 Dated: 23 July 2008

Respectfully submitted,

BERRY | WILKINSON | LAW GROUP

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9 By: Alison Berry Wilkinson
Attorneys for Plaintiffs Dennis Hart and Ron Miller